

TITLE 8 SOCIAL SERVICES
CHAPTER 215 MEDICAID ELIGIBILITY - SUPPLEMENTAL SECURITY INCOME (SSI)
METHODOLOGY
PART 500 INCOME AND RESOURCE STANDARDS

8.215.500.1 ISSUING AGENCY: New Mexico Human Services Department.
[2/1/1995; 8.215.500.1 NMAC - Rn, 8 NMAC 4.SSI.000.1, 3/1/2001]

8.215.500.2 SCOPE: The rule applies to the general public.
[2/1/1995; 8.215.500.2 NMAC - Rn, 8 NMAC 4.SSI.000.2, 3/1/2001]

8.215.500.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See NMSA 1978 Section 27-2-12 et. seq. (Repl. Pamp. 1991).
[2/1/1995; 8.215.500.3 NMAC - Rn, 8 NMAC 4.SSI.000.3, 3/1/2001]

8.215.500.4 DURATION: Permanent.
[2/1/1995; 8.215.500.4 NMAC - Rn, 8 NMAC 4.SSI.000.4, 3/1/2001]

8.215.500.5 EFFECTIVE DATE: February 1, 1995.
[2/1/1995; 8.215.500.5 NMAC - Rn, 8 NMAC 4.SSI.000.5, 3/1/2001]

8.215.500.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.
[2/1/1995; 8.215.500.6 NMAC - Rn, 8 NMAC 4.SSI.000.6, 3/1/2001]

8.215.500.7 DEFINITIONS: Relative: A son/daughter; grandson/granddaughter; step-son/step-daughter; in-laws; mother/father; step-mother/step-father; half sister/half brother; grandmother/grandfather; aunt/uncle; sister/brother; step-brother/step-sister; and niece/nephew.
[8.215.500.7 NMAC - N, 4/1/2009]

8.215.500.8 [RESERVED]

8.215.500.9 NEED DETERMINATION: This section describes the methodology to be used in determining countable resources and income for medicaid eligibility categories which use supplemental security income (SSI) methodology. These guidelines are used for retroactive medicaid eligibility for SSI recipients as well as initial and on-going eligibility for qualified medicare beneficiaries (QMB), qualified disabled working individuals (QD), medicaid extension and specified low income medicare beneficiaries (SLIMB). Medicaid eligibility is determined prospectively. Applicants/recipients must meet, or expect to meet, all financial and nonfinancial eligibility criteria in the month for which a determination of eligibility is made. Applicants for and recipients of medicaid must apply for and take all necessary steps to obtain any income or resources to which they may be entitled. Such steps must be taken within thirty (30) days of the date the human services department (HSD) furnishes notice of the potential entitlement.

A. Failure to apply for and take steps to determine eligibility for other benefits: Failure or refusal to apply for and take all necessary steps to determine eligibility for other benefits after notice is received results in an applicant/recipient becoming ineligible for medicaid.

B. Exceptions to general requirement: Applicants/recipients who have elected a lower VA payment do not need to reapply for veterans administration improved pension (VAIP) benefits. Crime victims are not required to accept victims compensation payments from a state-administered fund as a condition of medicaid eligibility.
[2/1/1995, 7/31/1997; 8.215.500.9 NMAC - Rn, 8 NMAC 4.SSI.500, 3/1/2001]

8.215.500.10 APPLICATION PROCESS: [Reserved]
[2/1/1995, 7/31/1997; 8.215.500.10 NMAC - Rn, 8 NMAC 4.SSI.501, 3/1/2001]

8.215.500.11 RESOURCE STANDARDS: A "resource" is defined as cash or liquid assets and real or

personal property which is owned and can be used either directly, or by sale or conversion, for the applicant/recipient's support and maintenance. Resources may be liquid or non-liquid and may be excluded from the eligibility determination process under certain conditions. A liquid resource is an asset which can readily be converted to cash. A non-liquid resource is an asset or property which cannot readily be converted to cash.

A. Resource determination: The resource determination is made as of the first moment of the first day of the month of application. An applicant/recipient is ineligible for any month in which his/her countable resources exceed the allowable resource standard as of the first moment of the first day of the month. Changes in the amount of countable resources during a month do not affect eligibility or ineligibility for that month.

B. Distinguishing between resources and income: Resources must be distinguished from income to avoid counting a single asset twice. As a general rule, ownership of a resource precedes the current month while income is received in the current month. Income held by an applicant/recipient until the following month becomes a resource.

[2/1/1995, 7/31/1997; 8.215.500.11 NMAC - Rn, 8 NMAC 4.SSI.510, 3/1/2001; A, 4/1/2009]

8.215.500.12 APPLICABLE RESOURCE STANDARDS: The resource standard for medicaid extension as well as retroactive SSI medicaid eligibility determinations is \$2,000. See [\[Section QMB-510\] 8.240.500.10 NMAC](#) for resource standards applicable to QMB. See Section [\[QDS-510\] 8.242.500.10 NMAC](#) for standards applicable to the qualified disabled working individuals program. See Section [\[SMB-510\] 8.245.500.10 NMAC](#) for standards applicable to the SLIMB program.

A. Liquid resources: The face value of liquid resources such as cash, savings or checking accounts is considered in determining medicaid eligibility. The countable value of resources such as securities, bonds, real estate contracts and promissory notes is based on their current fair market value.

(1) An applicant/recipient must provide verification of the value of all liquid resources. The resource value of a bank account is customarily verified by a statement from the bank showing the account balance as of the first moment of the first day of the month in question. If an applicant/recipient cannot provide this verification, the ISD worker sends a bank or postal savings clearance to the appropriate institution(s).

(2) If the applicant/recipient can demonstrate that a check was written and delivered to a payee but not cashed by the payee prior to the first moment of the first day of the month, the amount of that check is subtracted from the applicant/recipient's checking account balance to arrive at the amount to be considered a countable resource.

B. Non-liquid resources: The value of Non-liquid resources is computed at current fair market value. See below for discussion of equity value.

(1) **Real property:** If an applicant/recipient is the sole owner of real property other than a home and has the right to dispose of it, the entire equity value is included as a countable resource. If an applicant/recipient owns property with one or more individuals and the applicant/recipient has the right, authority or power to liquidate the property or his/her share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource to the individual. The applicant/recipient must provide a copy of the legal document which indicates his/her interest in the property.

(2) **Vehicles:** One automobile is totally excluded regardless of value if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be Non-liquid resources. Equity in the other automobiles is counted as a resource. Recreational vehicles and boats are considered household goods and personal effects rather than vehicles.

(3) **Household goods and personal effects:** Household goods and personal effects are considered countable resources if the items were acquired or are held for their value or are held as an investment. Such items can include but are not limited to: gems, jewelry that is not worn or held for family significance, or collectibles.

[2/1/1995, 7/31/1997; 8.215.500.12 NMAC - Rn, 8 NMAC 4.SSI.511, 3/1/2001; A, 1/1/2006; A/E, 2/1/2007; A, 4/1/2009; A, xx-xx-xx]

8.215.500.13 COUNTABLE RESOURCES: Before a resource can be considered countable, the three criteria listed below must be met.

A. Ownership interest: An applicant/recipient must have an ownership interest in a resource for it to be countable. The fact that an applicant/recipient has access to a resource, or has a legal right to use it, does not make it countable unless the applicant/recipient also has an ownership interest in it.

B. Legal right to convert resource to cash: An applicant/recipient must have the legal ability to spend the funds or to convert non-cash resources into cash.

(1) **Physical possession of resource:** The fact that an applicant/recipient does not have physical possession of a resource does not mean it is not his/her resource. If he/she has the legal ability to spend the funds or convert the resource to cash, the resource is considered countable. Physical possession of savings bonds is a legal requirement for cashing them.

(2) **Unrestricted use of resource:** An applicant/recipient is considered to have free access to the unrestricted use of a resource even if he/she can take those actions only through an agent, such as a representative payee or guardian.

(3) If there is a legal bar to the sale of a resource, the resource is not countable. If the co-owner of real property can bring an action to partition and sell the property, his/her interest in the property is a countable resource.

C. Legal ability to use a resource: If a legal restriction exists which prevents the use of a resource for the applicant/recipient's own support and maintenance, the resource is not countable.

D. Joint ownership of resources: If an applicant/recipient owns either liquid or non-liquid resources jointly with others, he/she has 30 days from the date requested by the ISD worker to submit all documentation required to prove his/her claims regarding ownership of, access to, and legal ability to use the resource for personal support and maintenance. Failure to do so results in the presumption that the resource is countable and belongs to the applicant/recipient.

(1) **Jointly held property:** If jointly held property is identified during review of an active case, the ISD worker must:

- (a) determine whether the property is a countable resource;
- (b) determine whether the value of the jointly held property plus the value of other countable resources exceeds the allowable resource maximum;
- (c) if the value of countable resources exceeds the allowable maximum, advance notice is furnished to the applicant/recipient of the intent to close the case and his/her right to verify claims regarding ownership of, access to and legal ability to use the property for personal support and maintenance;
- (d) if the applicant/recipient fails to provide required information or respond within the advance notice period, the case is closed; and
- (e) if, after expiration of the advance notice period but prior to the end of the month in which the advance notice expires, the applicant/recipient provides the required evidence to show the property is not a countable resource, or is countable in an amount which, when added to the value of other countable resources, does not exceed the maximum allowable limit, and eligibility continues to exist on all other factors, the case is reinstated for the next month.

(2) **Joint bank accounts:** If liquid resources are in a joint bank account of any type, the applicant/recipient's ownership interest, while the parties to the account are alive, is presumed to be proportionate to the applicant/recipient's contributions to the total resources on deposit.

(a) The applicant/recipient is presumed to own a proportionate share of the funds on deposit unless he/she presents clear and convincing evidence that the parties to the account intended the applicant/recipient to have a different ownership interest.

(b) To establish the applicant/recipient's ownership interest in a joint account, the following are required:

(i) statement by the applicant/recipient regarding contributions to the account; reasons for establishing the account; who owns the funds in the account; and any supporting documentation; plus

(ii) corroborating statements from the other account holder(s); if either the applicant/recipient or the other account holder is not capable of making a statement, the applicant/recipient or representative must obtain a statement from a third party who has knowledge of the circumstances surrounding the establishment of the joint account.

(c) Failure to provide required documentation within 30 days of the date requested by the ISD worker results in a determination that the entire account amount belongs to the applicant/recipient.

(d) If the existence of a jointly held bank account is identified during the review of an active case, the ISD worker requests evidence of ownership and accessibility. If the evidence is not furnished within 30 days of the request, the case is closed.

E. Other countable resources: Other liquid or non-liquid resources must be considered in the calculation of total countable resources. Under certain circumstances, the following non-liquid resources may be included in the calculation of countable resources:

- (1) burial funds;

- (2) burial spaces;
- (3) life estates;
- (4) life insurance and other insurance products;
- (5) income-producing property; and
- (6) other financial investment products.

F. The home as a countable resource: If the applicant/recipient or his/her representative states the applicant/recipient does not intend to return to the home and it is not the residence of the applicant/recipient's spouse or dependent relative, the home is considered a countable resource. If the applicant/recipient or his/her representative puts the home up for sale and it is not the primary residence of the applicant/recipient's spouse or a dependent relative, the home is considered a countable resource.

G. Value of property: The applicant/recipient must supply the ISD worker with written documentation regarding the fair market value of the property from a real estate agent, title company or mortgage insurance company in and familiar with the area in which the property is located in addition to any encumbrances against the property. The ISD worker determines the equity value of the property by subtracting the amount of the encumbrances from the fair market value of the property.

H. ABLE ACT –as Public Law 113-295, The Stephen Beck, Jr., Achieving a Better Life Experience Act (ABLE Act)- Enacted December 19, 2014. The ABLE Act shall establish state-run tax advantaged accounts for eligible individuals to use for disability related expenses. Tax-advantaged accounts allow an eligible individual to save and use the funds for disability-related expenses. An ABLE program has been established and maintained by the state. An eligible individual can open an ABLE account through the ABLE program in any state.

(1) Under the ABLE act, individual eligibility is determined if the person is:
(a) Entitled to benefits based on blindness or disability under Title II or Title XVI of the Social Security Act; or

(b) Has a disability certification filed with the U.S. Secretary of the Treasury and a disability that began before age 26.

(2) ABLE account balances and distributions are considered in determining eligibility for SSI.

(a) Amounts over \$100,000 count toward the \$2,000 SSI resource limit.

(b) If an ABLE account balance exceeds \$100,000 by an amount that causes the recipient to exceed the SSI resource limit the recipient is ineligible for SSI.

(c) The Social Security Administration (SSA) will place such an ineligible individual into a special ABLE suspension period where:

(i) The recipient's SSI benefits are suspended without time limit (as long as he or she remains otherwise eligible).

(ii) The recipient will still be considered to be SSI eligible for the SSI Medical Assistance Program (MAP).

(iii) After 12 months of suspension, eligibility is terminated and the person must reapply for benefits.

(iv) If a person who does not meet other SSI eligibility criteria during a suspension period is ineligible for SSI during a suspension period he or she is also ineligible for the SSI MAP.

(3) Section 529A(d)(4) of the act requires that the state electronically submit on a monthly basis to the Commissioner of Social Security statements on relevant distributions and account balances from all ABLE accounts.

(4) Resource exclusions related to the ABLE ACT can be found at **8.215.500.14 (N) RESOURCE EXCLUSIONS.**

(5) For how the ABLE ACT contributions treatment in regards to income please see **8.215.500.18 INCOME.**

(6) For how the ABLE ACT distributions please see **8.215.500.20 D. UNEARNED INCOME EXCLUSIONS.**

[2/1/1995, 7/31/1997; 8.215.500.13 NMAC - Rn, 8 NMAC 4.SSI.512, 3/1/2001; A/E, 2/1/2007; A, 4/1/2009; A, xx-xx-xx]

8.215.500.14 RESOURCE EXCLUSIONS: Some types of resources can be excluded from the calculation of countable resources if they meet the specific criteria listed below.

A. Burial fund exclusion: Up to \$1,500 can be excluded from the countable liquid resources of an applicant/recipient if designated as burial funds. An additional amount of up to \$1,500 can be excluded from

countable liquid resources if designated as burial funds for the spouse of the applicant/recipient. The burial fund exclusion is separate from the burial space exclusion.

(1) **Retroactive designation of burial funds:** An applicant/recipient can retroactively designate funds for burial back to the first day of the month in which the applicant/recipient intended the funds to be set aside for burial. The applicant/recipient must sign a statement indicating the month the funds were set aside for burial.

(2) **Limit on exclusion:** An applicant/recipient can designate as much of his/her liquid resources as he/she wishes for burial purposes. However, only one burial fund allowance of up to \$1,500 each for the applicant/recipient and his/her spouse can be excluded from countable resources. A burial fund does not continue from one period of eligibility to another (i.e., across a period of ineligibility). For each new period of eligibility, any exclusion of burial funds must be developed as for an initial application.

(3) **Removal of designation:** An applicant/recipient cannot "undesignate" burial funds unless one of the following occurs:

(a) eligibility terminates;
(b) part, or all, of the funds can no longer be excluded because the applicant/recipient purchased excluded life insurance or an irrevocable burial contract which partially or totally offsets the available burial fund exclusion; or

(c) the applicant/recipient uses the funds for another purpose.

(4) **Reduction of burial fund exclusion:** The \$1,500 burial fund exclusion is reduced by the following:

(a) the face value of excluded life insurance policies;
(b) assets held in irrevocable burial trusts; irrevocable means the value paid cannot be returned to the applicant/recipient;

(c) assets that are not burial space items held in irrevocable burial contracts;
(d) assets held in other irrevocable burial arrangements.

(5) **Interest from burial fund:** Interest derived from a burial fund is not considered a countable resource or income if all of the following conditions exist:

(a) the original amount is excluded;
(b) the excluded burial fund is not commingled with non-excluded burial funds; and
(c) the interest earned remains with the excluded burial funds.

(6) **Commingling of burial funds:** Burial funds cannot be commingled with non-burial funds. If only part of the funds in an account is designated for burial, the burial fund exclusion cannot be applied until the funds designated for burial expenses are separated from the non-burial funds. Countable and excluded burial funds can be commingled.

(7) **Life insurance policy designated as burial fund:** An applicant/recipient can designate a life insurance policy as a burial fund at the time of application. The ISD worker must first analyze the rule according to Subsection H of 8.215.500.14.NMAC, *life insurance exclusion*, and following subsections.

(8) **Burial contracts:** If an applicant/recipient has a prepaid burial contract, the ISD worker determines whether it is revocable or irrevocable and whether it is paid for. Until all payments are made on a burial contract, the amounts paid are considered burial funds and no burial space exclusions apply. An applicant/recipient may have a burial contract which is funded by a life insurance policy. The life insurance may be either revocably or irrevocably assigned to a funeral director or mortuary. A revocable contract exists if the value can be returned to the applicant/recipient. An irrevocable contract exists when the value cannot be returned.

(a) If the contract or insurance policy assignment is revocable, the following apply.
(i) If the burial contract is funded by a life insurance policy, the policy is the resource which must be evaluated. The burial contract itself has no value. It exists only to explain the applicant/recipient's burial arrangements.

(ii) No exclusions can be made for burial space items because the applicant/recipient does not have a right to them if the contract is not paid for or the policy is not paid up.

(b) If the assignment is irrevocable, the life insurance or burial contract is not a countable resource because the applicant/recipient does not own it.

(i) The burial space exclusions can apply if the applicant/recipient has the right to the burial space items.

(ii) The value of the irrevocable burial arrangement is applied against the \$1,500 burial fund exclusion only if the applicant/recipient has other liquid resources to designate for burial.

B. Burial space exclusion: A burial space or an agreement which represents the purchase of a burial

space held for the burial of an applicant/recipient, his/her spouse, or any other member of his/her immediate family, is an excluded resource regardless of value. Interest and accruals on the value of a burial space are excluded from consideration as countable income or resources. When calculating the value of resources to be deemed to an applicant/recipient from his/her parent(s) or spouse, the value of spaces held by the parent(s)/spouse which are to be used for the burial of the applicant/recipient or any other member of the applicant/recipient's immediate family, including the deemer parent/spouse, must be excluded. The burial space exclusion is separate from, and in addition to, the burial fund exclusion.

(1) **Burial space definitions:** "Burial space" is defined as a(n) burial plot, gravesite, crypt, mausoleum, casket, urn, niche, or other repository customarily used for the deceased's bodily remains. A burial space also includes necessary and reasonable improvements or additions, such as vaults, headstones, markers, plaques, burial containers (e.g., caskets), arrangements for the opening and closing of a gravesite, and contracts for care and maintenance of the gravesite, sometimes referred to as endowment or perpetual care. Items that serve the same purpose are excluded once per individual, such as excluding a cemetery lot and a casket, but not a casket and an urn.

(2) **Burial space contract:** An agreement which represents the purchase of a burial space is defined as a contract with a burial provider for a burial space held for the eligible applicant/recipient or a member of his/her immediate family. Until all payments are made on the contract, the amounts paid are considered burial funds and no burial space exclusions apply. An eligible applicant/recipient's immediate family includes:

- (a) the spouse;
- (b) natural or adoptive parents;
- (c) minor or adult children, including adoptive and stepchildren;
- (d) siblings, including adoptive and stepsiblings; and
- (e) spouse of any of the above relatives;
- (f) if a relative's relationship to an applicant/recipient is by marriage only, the

relationship ceases to exist upon the dissolution of the marriage.

(3) **Burial space "held" for an applicant/recipient:** A burial space is considered held for an applicant/recipient if:

- (a) someone has title to or possesses a burial space intended for the use of the applicant/recipient or a member of his/her immediate family; or
- (b) someone has a contract with a funeral service company for a specified burial space for the applicant/recipient or a member of his/her immediate family, such as an agreement which represents the individual's current right to the use of the items at the amount shown.
- (c) until the purchase price is paid in full, a burial space is not considered "held for" an individual under an installment sales contract or similar device if:
 - (i) the individual does not currently own the space;
 - (ii) the individual does not currently have the right to use the space; and
 - (iii) the seller is not currently obligated to provide the space.

C. Life estate exclusion: A life estate gives an applicant/recipient certain rights to real property. These rights determine how the resource is treated in determining eligibility for medicaid.

(1) **Possession:** An applicant/recipient has the right to live on the real property for the rest of his/her life. If it is his/her principal place of residence (home), the life estate is evaluated in accordance with Subsection E of 8.215.500.14.NMAC, *exclusions for real property and home*, and following subsections.

(2) **Use and profit:** An applicant/recipient has the right to use and obtain profit from the real property. If it is income producing property, such as a rental or farm, the life estate is evaluated as income producing property. See Subsection F of 8.215.500.14 NMAC, *income-producing property exclusion*, and following subsections.

(3) **Sale of the life estate interest:** An applicant/recipient has the right to sell his/her life estate interest. The value of this interest is less than the fair market value of the property and is similar to a lease because of the time frame involved. The value of the life estate is based on the age and life-expectancy of the applicant/recipient.

(4) **Valuation of life estates:** The "unisex life estate and remainder interest tables" are used to determine the value of a life estate. See 8.200.520.14 NMAC, *resource exclusions*. The value is computed by multiplying the current market value by the percentage reduction on the unisex table under the column for the applicant/recipient's age. If an applicant/recipient feels the value calculated based on this method is overstated, he/she can obtain a valuation of the life estate in the area for use as documentation of lesser value.

(5) **Legal documentation establishing life estate:** The legal document establishing a life

estate may affect one or more of the rights discussed above. Joint ownership of a life estate may require the co-owner's approval for sale. See 8.215.500.13 NMAC, *countable resources*, and following subsections for criteria to use in evaluating the count ability of the resource.

D. Settlement exclusions:

(1) Agent orange settlement payments made to veterans or their survivors are excluded from consideration as resources.

(2) Payments made under the Radiation Exposure Compensation Act are excluded from consideration as resources.

(3) Payments by the remembrance, responsibility and the future foundation to individual survivors forced into slave labor by the Nazis are excluded as resources.

(4) Payments received from a state-administered fund established to aid victims of crime are excluded for nine months, beginning the month after the month of receipt.

E. Exclusions for real property and home: A home is any shelter used by an applicant/recipient or his/her spouse as the principal place of residence. The home includes any buildings and contiguous land used in the operation of the home. A home is not considered a countable resource while in use by the applicant/recipient as his/her principal place of residence. The home continues to be excluded during periods when the applicant/recipient resides in an acute care or long term care medical facility if the applicant/recipient, or his/her representative, states that the applicant/recipient intends to return to the home. If the applicant/recipient or his/her representative states the applicant/recipient does not intend to return to the home but the home is the residence of the applicant/recipient's spouse or dependent relative, the home is an excluded resource. If the applicant/recipient or his/her representative puts the home up for sale and it is *not* the primary residence of the applicant/recipient's spouse or a dependent relative, the home is considered a countable resource.

F. Income-producing property exclusion: To be excluded from consideration as a countable resource, income-producing property that does not qualify as a bona fide business (e.g., rental property or mineral rights) must have an equity value of no more than \$6,000 and an annual rate of return of at least six percent of the equity value. See Subparagraph (b) of Paragraph (1) of Subsection F of 8.215.500.14 NMAC, *determination of rate of return*, below if the equity value exceeds \$6,000 but the rate of return is at least six percent annually. The \$6,000 and six percent limitation does not apply to property used in a trade or bona fide business, or to property used by an applicant/recipient as an employee which is essential to the applicant/recipient's self-support (e.g., tools used in employment as a mechanic, property owned or being purchased in conjunction with operating a business). Existence of a bona fide business can be established by documentation such as business tax returns.

(1) **Determination of rate of return:** To calculate the annual rate of return for income producing property when the \$6,000 and six percent limits apply, the previous year's income tax statement, or at least three months earnings is used to project the rate of return for the year.

(a) If the income is sporadic or has decreased from that needed to maintain a six percent rate of return for the coming year, the property is reevaluated at appropriate intervals.

(b) If the annual rate of return is at least six percent of the equity value but the equity exceeds \$6,000, only the excess equity is a countable resource.

(c) If the annual rate of return is less than six percent but the usual rate of return is more, the property is excluded as a countable resource if all of the following conditions are met:

(i) unforeseeable circumstances, such as a fire, cause a temporary reduction in the rate of return;

(ii) the previous year's rate of return, as documented by the income tax statement or several months receipts, is at least six percent; and

(iii) the property is expected to produce a rate of return of at least six percent within 18 months of the end of the year in which the adverse circumstances occurred; the ISD worker records in the case narrative the plan of action which is expected to increase the rate of return.

(d) The ISD worker notifies the applicant/recipient in writing that the property is excluded based on its expected increase in return and that it will be reevaluated at the end of the 18 month grace period. When this period ends, the property must be producing an annual rate of at least six percent to continue to be excluded as a countable resource.

(2) **Types of income-producing property:** Income-producing property includes:

(a) a business, such as a farm or store, including necessary capital and operating assets such as land and buildings, inventory, or livestock; the property must be in current use or have been used with a reasonable expectation of resumed use within a year of its most recent use; the ISD worker must account for the cash actually required to operate the business; liquid business assets of any amount are excluded;

(b) non-business property includes rental property, leased property, land leased for its mineral rights and property producing items for home consumption; property which produces items solely for home use is assumed to be producing an annual rate of return of at least six percent;

(c) employment-related property, such as tools or equipment; the applicant/recipient must provide a statement from his/her employer to establish that tools or equipment are required for continued employment; if the applicant/recipient is self-employed, only those tools normally required to perform the job adequately are excluded; the applicant/recipient must obtain a statement from someone in the same line of self-employment to establish what is excludable.

G. Vehicle exclusion: The term "vehicle" includes any mode of transportation, such as a passenger car, truck or special vehicle. Included in this definition are vehicles which are unregistered, inoperable, or in need of repair. Vehicles used solely for purposes other than transportation, such as disassembly to resell parts, racing, or as an antique are not included in this definition. Recreational vehicles and boats are classified as personal effects and are evaluated under the household goods and personal effects exclusion. One vehicle is totally excluded regardless of value if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be Non-liquid resources. Equity in the other automobiles is counted as a resource.

H. Life insurance exclusion: The value of life insurance policies is not considered a countable resource if the total cumulative face value of all policies owned by the applicant/recipient does not exceed \$1,500. A policy is considered to be "owned" by the applicant/recipient if the applicant/recipient is the only one who can surrender the policy for cash.

(1) **Consideration of burial insurance and term insurance:** Burial insurance and term insurance are not considered when computing the cumulative face value because this insurance is redeemable only upon death.

(2) **Calculation when value exceeds limit:** If the total cumulative face value of all countable life insurance policies owned by the applicant/recipient exceeds \$1,500, the ISD worker:

(a) verifies the total cash surrender value of all policies and considers the total amount a countable resource; and

(b) informs the applicant/recipient that the insurance policies can be converted to term insurance or ordinary life insurance of lower face value at his/her option, if the cash surrender value, alone or in combination with other countable resources, exceeds the resource standard.

I. Produce for home consumption exclusion: The value of produce for home consumption is totally excluded.

J. Exclusion of settlement payments from the department of housing and urban development: Payments from the department of housing and urban development (HUD) as defined in *Underwood v. Harris* are excluded as income and resources. These one-time payments were made in the spring of 1980 to certain eligible tenants of subsidized housing [Section 236 of the National Housing Act].

(1) **Segregation of payment:** To be excluded as a resource, payments retained by an applicant/recipient must be kept separate. These payments must not be combined with any other countable resources.

(2) **Income from segregated funds:** Interest or dividend income received from segregated payment funds is not excluded from income, or, if retained, is not an excluded resource. This interest or dividend income must be kept separate from excludable payment funds.

K. Lump sum payments exclusion: SSI and social security lump sum payments for retroactive periods are excluded as countable resources for nine months after the month in which they are received. See Paragraph (4) of Subsection A of 8.215.500.16 NMAC, *treatment of SSI or social security lump sum payments*, for policy regarding SSI and social security lump sums which are placed into the ownership of a medicaid qualifying trust. Social security lump sum payments are considered infrequent income.

L. Home replacement exclusion: The value of a promissory note or similar installment sales contract which constitutes proceeds from the sale of an excluded home is excluded from countable resources if all of the following conditions are met:

(1) the note results from the sale of the applicant/recipient's home as described in Subsection E of 8.215.500.14 NMAC, *exclusion for real property and home*, and following subsections;

(2) within three months of receipt (execution) of the note, the applicant/recipient purchases a replacement home which meets the definition of a home in Subsection E of 8.215.500.14 NMAC, *exclusion for real property and home*, and following subsections; and

(3) all note-generated proceeds are reinvested in the replacement home within three months of receipt.

(4) **Additional exclusions:** In addition to excluding the value of the note itself, the down payment received from the sale of the former home, as well as that portion of any installment amount constituting payment on the principal are also excluded from countable resources.

(5) **Failure to purchase another excluded home timely:** If the applicant/recipient does not purchase another home which can be excluded under the provisions of Subsection E of 8.215.500.14 NMAC, *exclusions for real property and home*, and following subsections within three months, the value of the promissory note or similar installment sales contract received from the sale of an excluded home becomes a countable resource as of the first moment of the first day of the month following the month the note is executed. If the applicant/recipient purchases a replacement home after the expiration of the three month period, the value of the promissory note or similar installment sales contract becomes an excluded resource effective the month following the month of purchase of the replacement home provided that all other proceeds are fully and timely reinvested.

(6) **Failure to reinvest proceeds timely:** If the proceeds from the sale of an excluded home under a promissory note or similar installment sales contract are not reinvested fully within three months of receipt in a replacement home, the following resources become countable as of the first moment of the first day of the month following receipt of the payment:

- (a) the fair market value of the note;
- (b) the portion of the proceeds, retained by the individual, which was not timely reinvested; and
- (c) the fair market value of the note remains a countable resource until the first moment of the first day of the month following the receipt of proceeds that are fully and timely reinvested in the replacement home; failure to reinvest proceeds for a period of time does not permanently preclude exclusion of the promissory note or installment sales contract; however, previously received proceeds that were not timely reinvested remain countable resources to the extent they are retained.

(7) **Interest payments:** If interest is received as part of an installment payment resulting from the sale of an excluded home under a promissory note or similar installment sales contract, the interest payments are considered countable unearned income in accordance with Paragraph (3) of Subsection C of 8.215.500.20 NMAC, *interest on promissory note or sales contract*.

(8) **When the home replacement exclusion does not apply:** If the home replacement exclusion does not apply, the market value of a promissory note or sales contract as well as the portion of the payment received on the principal are considered countable resources.

M. Household goods and personal effects exclusion: Household goods and personal effects are excluded if they meet one of the following four criteria. They are:

(1) items of personal property, found in or near the home, which are used on a regular basis; items may include but are not limited to: furniture, appliances, recreational vehicles (i.e. boats and RVs), electronic equipment (i.e. computers and television sets), and carpeting;

(2) items needed by the householder for maintenance, use and occupancy of the premises as a home; items may include but are not limited to: cooking and eating utensils, dishes, appliances, tools, and furniture.

(3) items of personal property ordinarily worn or carried by the individual; items may include but are not limited to: clothing, shoes, bags, luggage, personal jewelry including wedding and engagement rings, and personal care items;

(4) items otherwise having an intimate relation to the individual; items may include but are not limited to: prosthetic devices, educational or recreational items such as books or musical instruments, items of cultural or religious significance to an individual; or items required because of an individual's impairment.

N. ABLE ACT EXCLUSIONS

(1) For Most Federal Means-Tested Programs:

(a) ABLE account balances are excluded.

(b) Limitation is the maximum amount that can be contributed under a state plan.

(2) For the SSI Program:

(a) ABLE account balances are excluded up to \$100,000.

(b) Amounts over \$100,000 count toward the \$2,000 SSI resource limit.

(c) If an ABLE account balance exceeds \$100,000 by an amount that causes the recipient to exceed the SSI resource limit the recipient is ineligible for SSI.

O. INDIAN PER CAPITA: Public Law 97-458 (section 4) Amended Public Law 93-134, the Judgement Award Authorization Act, to require the exclusion of per capita payments under the Indian Judgement Fund Act of \$2,000 or less. Initial purchases made with exempt payments distributed between January 1, 1982 and

January 12, 1983, are excluded from resources to the extent that excluded funds were used.

[2/1/1995, 7/31/1997; 8.215.500.14 NMAC - Rn, 8 NMAC 4.SSI.513, 3/1/2001; A, 5/1/2001; A, 7/1/2005; A, 1/1/2006; A, 4/1/2009; A, xx-xx-xx]

8.215.500.15 ASSET TRANSFERS:

A. Transfers of assets for less than fair market value by SSI applicants/recipients are considered only if/when an applicant/recipient becomes institutionalized. For medicaid categories using SSI resource determination methodology, transfers by non-institutionalized applicants/recipients are not considered a factor of eligibility.

B. Transfer of resources by an SSI recipient: An institutionalized SSI applicant/recipient who transfers resources without fair return may become ineligible for medicaid coverage of nursing home care for a specified period of time. See 8.281.500.14 NMAC and following subsections for information on resource transfer policies and penalties applicable to institutionalized applicants/recipients.

[2/1/1995, 7/31/1997; 8.215.500.15 NMAC - Rn, 8 NMAC 4.SSI.515, 3/1/2001]

8.215.500.16 TRUSTS: In some instances, an applicant/recipient with a trust can be eligible for SSI cash benefits but not be automatically eligible for medicaid. If the social security administration (SSA) determines that an SSI recipient has a trust, SSI notifies the human services department (HSD) of the existence of the trust. The recipient is then notified that the trust document must be submitted to and reviewed by HSD before medicaid eligibility is determined.

A. Medicaid qualifying trusts: A "medicaid-qualifying trust" (MQT) is a trust or similar legal device established prior to August 11, 1993, other than by will, by an applicant/recipient or spouse, under which the applicant/recipient may be the beneficiary of all or part of the payments from the trust. The distribution of trust payments is determined by one or more trustees who are permitted to exercise discretion with respect to the distribution of payments to the applicant/recipient. When the use of an attorney is solicited to establish a trust, the beneficiary of that trust is not exempt from the requirements of MQT provisions. Legal instruments such as trusts are almost always drafted by an attorney. It is the grantor him/herself who actually establishes or creates the trust when he/she signs or executes it.

(1) Amount deemed available from an MQT: The amount from an MQT that is deemed available to an applicant/recipient is the maximum amount that could be distributed to the applicant/ recipient, or for the care of the applicant/ recipient, regardless of restrictions imposed by the trust on the allowable use of the funds. If, for example, the trustee can make payments to a health care provider for medical services, the applicant/recipient beneficiary is considered to be receiving benefits from the trust even though these benefits are not paid directly to the beneficiary. This provision applies regardless of whether the MQT was set up for the purpose of qualifying for medicaid or whether the trust is irrevocable.

(2) Revocable trusts: Revocable trusts that limit access to the assets held in trust must be dissolved and the assets spent down before eligibility can be established.

(3) Beneficiary of trust lives in an ICF-MR: If the beneficiary of a trust is an applicant/recipient who is mentally retarded and resides in an intermediate care facility for the mentally retarded (ICF-MR), that applicant/recipient's trust is not considered an MQT if the trust or trust decree was established prior to April 7, 1986, and is solely for the benefit of that applicant/recipient.

(4) Treatment of SSI or social security lump sum payments: SSI or social security lump sum payments for retroactive periods which are placed into an MQT do not qualify for the nine month exclusion from countable resources.

B. Trusts creating medicaid eligibility: [Reserved]

[2/1/1995, 7/31/1997; 8.215.500.16 NMAC - Rn, 8 NMAC 4.SSI.517, 3/1/2001; A, 4/1/2009]

8.215.500.17 DEEMING RESOURCES:

A. Deeming resources when an applicant/recipient lives with an ineligible spouse: If an eligible noninstitutionalized applicant/recipient lives in the same household with an ineligible spouse, the resources of the ineligible spouse are considered to belong to the applicant/recipient. The resource standard for a couple applies.

B. Deeming resources for minor applicant living with ineligible parent(s): If an applicant/recipient is a minor under eighteen (18) years of age, the resources of the parent(s) are deemed to the applicant/recipient if the parent(s) live in the same household.

(1) Computing deemed resources: To determine the amount of resources deemed to an applicant/recipient who is a minor, the following computation is made:

(a) determine the parent(s) resources;
(b) allow the parent(s) all the resource exclusions that an applicant/recipient receives; and
(c) remaining resources in excess of \$2,000 for one parent or \$3,000 for two (2) parents are deemed to the eligible minor.

(2) **Computing countable resources:** The deemed resources are added to the applicant/recipient's own countable resources. The minor applicant/recipient is eligible if countable resources do not exceed resource standards.
[2/1/1995, 7/31/1997; 8.215.500.17 NMAC - Rn, 8 NMAC 4.SSI.519, 3/1/2001]

8.215.500.18 INCOME:

A. An applicant/recipient's gross countable monthly income must be less than the maximum allowable monthly standard for the applicable medicaid category. Income may be in the form of cash, checks, money orders, or in-kind, including personal property or food. If income is not received in the form of cash, the cash value of the item is determined and counted as income. Income is counted in the month received. Income is considered available throughout the month, regardless of when in the month it is received. The ISD worker verifies and documents all income.

B. Types of income: Countable income is the sum of unearned income or earned income, less disregards or exclusions, plus deemed income.

(1) **Earned income:** Earned income consists of the total gross income received by an individual for services performed as an employee or as a result of self-employment.

(a) Royalties earned in connection with the publication of the applicant/recipient's work and any honorarium/fees received for services rendered are considered earned income.

(b) The self-employed applicant/recipient must provide an estimate of his/her current income based on the tax return filed for the previous year or current records maintained in the regular course of business. The estimate of net earnings for the entire previous taxable year is prorated equally among all months of the current year, even if the business is seasonal.

(i) Consideration is given to the applicant/recipient's explanation as to why he/she believes the estimated net earnings for the current year vary substantially from the information shown on his/her tax return for past years.

(ii) A satisfactory explanation is that the business suffered heavy loss or damage from fire, flood, burglary, serious illness or disability of the owner, or other such catastrophic events. Documentation must include copies of newspaper accounts or medical reports and must be filed in the case record to substantiate the need for a reduced estimate of current self-employment income.

(2) **Unearned income:** Unearned income consists of all other income (minus exclusions and disregards) that is not earned in the course of employment or self-employment.

(3) **Deemed income:** Deemed income is income which must be considered available to the assistance unit and counted in determining eligibility whether or not the income is actually made available. For household member(s) who are not members of the assistance unit but who have a support obligation to the assistance unit, income can only be deemed from a parent to his/her minor child(ren) who live in the same household and from one spouse to the other when both live in the same household.

C. CONTRIBUTIONS TO THE ABLE ACCOUNT:

(1) Contributions from any source to an ABLE account are not considered income to an SSI recipient.

(2) However:

(a) An SSI recipient's earnings contributed to an ABLE account are still considered wages and counted (even if payroll deduction).

(b) Gifts to an SSI recipient to be deposited into an ABLE account are considered as income.

(c) Gifts made directly into an ABLE account are not income.

[2/1/1995, 7/31/1997; 8.215.500.18 NMAC - Rn, 8 NMAC 4.SSI.520, 3/1/2001; A, 4/1/2009; A, xx-xx-xx]

8.215.500.19 INCOME STANDARDS: See 8.200.520 NMAC and following subsections for income standards applicable to the SSI-related medicaid categories.

A. Income exclusions: Income exclusions are applied before income disregards. Exclusions are applied in determining eligibility whether the income belongs to the applicant/recipient or to an individual from

whom income is deemed.

B. Infrequent or irregular income: Exclude the first \$30 per calendar quarter of earned income; and the first \$60 per calendar quarter of unearned income. The following definitions apply.

(1) "Irregular income" is income received on an unscheduled or unpredictable basis.

(2) "Infrequent income" is income received only once during a calendar quarter from a single source and includes:

(a) proceeds of life insurance policies;

(b) prizes and awards;

(c) gifts;

(d) support and alimony;

(e) inheritances;

(f) interest per account, and royalties;

(g) one-time lump sum payments, such as social security or retroactive SSI.

(3) "Frequency" is evaluated for the calendar quarter (i.e., January - March, April - June, July - September, October - December) but the dollar amount is considered in the month received.

C. Foster care: Foster care payments are totally excluded if:

(1) the foster child is not eligible for SSI; and

(2) the child was placed in the applicant/recipient's home by a public or private nonprofit child placement or child care agency.

D. Domestic volunteer services exclusions: Payments to volunteers under domestic volunteer services (ACTION) programs are excluded from consideration as income in the eligibility determination process. These programs include the following:

(1) volunteers in service to America (VISTA);

(2) university year for action (UYA);

(3) special demonstration and volunteer programs;

(4) retired senior volunteer program (RSVP);

(5) foster grandparent program;

(6) senior companion program.

E. Census bureau employment: Wages paid by the census bureau for temporary employment related to the census are excluded from consideration as income in the eligibility determination process.

[2/1/1995, 7/31/1997; 8.215.500.19 NMAC - Rn, 8 NMAC 4.SSI.521 & A, 3/1/2001; A, 7/1/2005]

8.215.500.20 UNEARNED INCOME:

A. Unearned income includes all income not earned in the course of employment or self-employment.

B. Income paid to one spouse is considered the income of that spouse. One-half the total income paid to a couple is considered available to each member of the couple.

(1) If payment is made in the name of either or both spouses and another party, only the applicant/recipient's proportionate share is considered available to him/her.

(2) If income is derived from property for which ownership is not established, such as unprobated property, one-half of the income is considered available to each member of a married couple.

C. Standards for unearned income: Unearned income is computed on a monthly basis. If there are no expenses incurred with the receipt of unearned income, such as annuities, pensions, retirement payments or disability benefits, the gross amount is considered countable unearned income.

(1) **Social security overpayments:** If the social security administration withholds an amount because of an overpayment, the gross social security payment amount is used to determine eligibility.

(2) **Rental income:** If an applicant/recipient has rental property, the ISD worker allows the cost of real estate taxes, maintenance and repairs, advertising, mortgage insurance and interest payments on the mortgage as deductions from the amount received as rent.

(3) **Interest on promissory note or sales contract:** The portion of the payment representing interest received from a promissory note or sales contract is considered unearned income. The market value of promissory notes or sales contracts and the portion of the payment representing payment of the principal are considered resources. See also Subsection L of 8.215.500.14 NMAC, *home replacement exclusion*.

D. Unearned income exclusions:

(1) **Interest from an excluded burial fund:** Interest from an excluded burial fund is not considered unearned income if the interest is applied toward the fund balance. If the interest is paid to the applicant/recipient, it is considered unearned income.

(2) **Tax refunds and earned income tax credit:** Tax refunds from any public agency for property taxes or taxes on food purchases are totally excluded. Any portion of a federal income tax return which constitutes an earned income tax credit is excluded.

(3) **Grants, scholarships and fellowships:** All grants, scholarships and fellowships used to pay tuition and fees at an educational institution, including vocational and technical schools, are totally excluded. Any portion of a grant, scholarship or fellowship used to pay any other expense, such as food, clothing or shelter, is not excluded.

(4) **Veterans payments:** Veterans aid and attendance (A&A) payments are excluded from unearned income for determination of eligibility.

(a) If an applicant/recipient receives an augmented VA payment as a veteran or veteran's widow or widower, the payment amount may include an increment for a dependent. If so, the VA must be contacted to provide documentation of the portion of the payment which represents the dependent's increment. When verified, this amount of the VA payment is considered the dependent's income.

(b) The portion of a veterans administration improved pension (VAIP) benefit intended for unreimbursed medical expenses is excluded for purposes of eligibility determination.

(5) **Payments by a third party:** Third party payments are excluded as income if made directly to the applicant/recipient's creditor.

(a) Third party payments may include mortgage payments by credit life or credit disability insurance and installment payments by a family member on a burial plot or prepaid burial contract.

(b) Interest from a burial contract that is automatically applied to the outstanding balance is excluded from unearned income. If the payment or interest is sent to the individual, it is counted as unearned income regardless of the sender's (third party's) intentions. This applies even if the sender specifies the purpose of the payment on the check.

(c) This provision does not apply if the signature of the creditor and the individual must both be present in order to negotiate the check (two-party check).

(6) **Indian tribe per capita payments:** ~~[Funds held in trust by the secretary of the interior for an Indian tribe and distributed on a per capita basis and any interest and investment income from these funds are excluded as income and resources in the eligibility determination process.]~~ As per Public Law 97-436 (section 4) up to \$2,000 of per capita distributions of judgment funds to member of the Confederated Tribes of the Warm Springs Reservation; according to Public Law 98-64 (see Public Law 100-580) Excluded except for funds held by Alaska Native Regional and Village Corporations (ANRVC) are not held in trust by the secretary of the interior and therefore ANRVC dividend distributions are not excluded from countable income under this exclusion.; as per Public Law 98-500 (section 8) All distributions to heirs of certain deceased Indians under the Old Age Assistance Claims Settlement Act except for per capita shares in excess of \$2,000.; Public Law 103-66 (section 13736) (see Public Law 92-203 and Public Law 100-241) Up to \$2,000 per year received by Indians that is derived from individual interests in trust or restricted lands; Public Law 111-291 (section 101)- Amounts received by an individual as a lump sum or a periodic payment via the Cobell settlement cannot be counted as income in the month received, or as a resource for the one year period beginning the date of receipt.

(7) **Plans for achieving self-support:** Income derived from, or necessary to, an approved plan for achieving self-support for a blind or disabled applicant/recipient under 65 years of age is excluded.

(a) For an applicant/recipient who is blind or disabled and over 65 years of age, this exclusion applies only if he/she received medicaid for the month preceding his/her 65th birthday.

(b) The self-support plan must be in writing and contain the following:

- (i) designated occupational objective;
- (ii) specification of any savings (resource) or earnings needed to complete the plan, such as amounts needed for purchase of equipment or for financial independence;
- (iii) identification and segregation of any income saved to meet the occupational goal; and
- (iv) designation of a time period for completing the plan and achieving the occupational goal.

(c) Plans for achieving self-support are developed by vocational rehabilitation counselors. If a self-support plan is not in place, the ISD worker makes a referral to the division of vocational rehabilitation (DVR).

(d) The ISD worker forwards the written plan and documentation to the MAD eligibility unit. The plan must be approved by that unit.

(e) An approved plan is valid for the following specified time periods:

- (i) initial period of no more than 18 months;
- (ii) extension period of no more than 18 months;
- (iii) final period of no more than 12 months; and
- (iv) total period of no more than 48 months.

(8) **Agent orange settlement payments:** Agent orange settlement payments made to veterans or their survivors are excluded from consideration as income in determining eligibility.

(9) **Radiation Exposure Compensation Act payments:** Payments made under the Radiation Exposure Compensation Act are excluded from consideration as income in determining eligibility.

(10) **Remembrance, responsibility and the future foundation:** Payments to individual survivors forced into slave labor by the Nazis are excluded.

(11) **Victims compensation payments:** Payments made by a state-administered fund established to aid victims of crime are excluded from consideration as income in determining eligibility.

(12) **SSI lump sums for retroactive periods:** Supplemental security income (SSI) lump sum payments for retroactive periods are excluded from consideration as countable income in the month received.

(13) **Life insurance and other burial benefits:** Life insurance and other burial benefits are unearned income to the beneficiary (not the owner). The ISD worker must subtract the amount spent on the insured individual's last illness or burial up to \$1,500. Any excess is counted as unearned income.

(14) **100% state-funded assistance payment:** Any 100% state-funded assistance payment based on need, such as general assistance (GA), is excluded. Any interim payments made by a state or municipality from all state or local funds while an SSI application is pending are excluded.

(15) **ABLE ACT Distributions:** Distributions from an ABLE account are excluded as income of the designated beneficiary, regardless of whether the distributions are for:

(a) **Qualified Disability Expenses (QDE):** QDEs are expenses related to the blindness or disability of the designated beneficiary and for the benefit of the designated beneficiary. QDEs include, but are not limited to, the following types of expenses:

- (i) Housing-related QDEs;
- (ii) Non-Housing-related QDEs; or
- (iii) Non-qualified expenses.
- (iv) Education;
- (v) Housing;
- (vi) Transportation;
- (vii) Employment training and support;
- (viii) Assistive technology and related services;
- (ix) Health;
- (x) Prevention and wellness;
- (xi) Financial management and administrative services;
- (xii) Legal fees;
- (xiii) Expenses for ABLE account oversight and monitoring;
- (xiv) Funeral and burial; and
- (xv) Basic living expenses.

(b) **QDEs for housing are payments for:**

- (i) Mortgage (including property insurance);
- (ii) Real property taxes;
- (iii) Rent;
- (iv) Heating fuel;
- (v) Gas;
- (vi) Electricity;
- (vii) Water;
- (viii) Sewer; and
- (ix) Garbage removal.

(c) **QDE's for Non Housing:** Distributions for other non-housing expenses are excluded if retained beyond the month received in their current ABLE account if the distribution is identifiable and is intended to eventually be expended for non-housing costs.

(d) **Non-qualified Expenses:** Not excluded under the ABLE Act are housing – related or other QDE's if retained by the beneficiary for two months.

8.215.500.21 DEEMED INCOME:

A. Availability: Deemed income is income which must be considered available to members of an assistance unit regardless of whether the income is actually made available.

B. Situations in which deeming occurs: For household member(s) who are not members of the assistance unit but who have a support obligation to the assistance unit member(s), income can only be deemed from a parent(s) to his/her minor child(ren) who live in the same household and from one spouse to the other when both live in the same household.

C. Parent or spouse receiving benefits based on economic need: In a deeming situation where one parent or the spouse is receiving a needs benefit, the benefit plus all of the income of the spouse/parent who receives the benefit is excluded from the deeming process. This exclusion applies only to the income of the individual who receives the benefit.

(1) **Needs benefit defined:** "Needs benefit" is any benefit or assistance which is paid by a governmental agency on the basis of economic need.

(2) **Consideration of household membership:** Even if the income of one parent is excluded from the deeming process, the parent is considered a member of the household for purposes of determining the parental allocation. This does not apply to benefits received under the temporary assistance to needy families (TANF) program. No income is allocated to a parent or child if that parent or child is receiving TANF assistance.

D. Applicant living with ineligible spouse:

(1) If an applicant/recipient is living in the same household with an ineligible spouse, income may be deemed from the ineligible spouse to the applicant/recipient.

(2) The methodology described below does not apply to the qualified medicare beneficiaries (QMB) program. See [\[Sections QMB 523.2 through QMB 523.23\]](#) [Paragraph \(1\) of Subsection B of 8.240.500.15 NMAC](#) for methodology applicable to the QMB program only.

(a) **Evaluation of applicant's income:** Determine the amount of income available to the applicant using only the applicant's own income and allow the \$20 disregard. If the applicant/recipient has earned income, the first \$65 plus one-half of the remainder is also disregarded.

(i) If an applicant/recipient's own income exceeds the income standard for an individual, the applicant/recipient is ineligible. No further calculation needs to be done.

(ii) If an applicant/recipient's countable income is less than the standard for an individual, determine the ineligible spouse's gross income.

(b) **Evaluation of ineligible spouse's gross income:** Determine the ineligible spouse's gross income (both earned and unearned). Subtract the \$20 general disregard plus the first \$65 and one-half of the remainder from any earned income. If there are no children in the household, compare the ineligible spouse's countable income to one-half of the SSI federal benefit rate (FBR) for an individual not living in the household of others. If the ineligible spouse's countable income is less than one-half of the SSI FBR, no income is deemed from the ineligible spouse to the applicant/recipient. If the ineligible spouse's countable income equals or exceeds one-half of the SSI FBR, income is deemed from the ineligible spouse to the applicant.

E. Applicant living with ineligible spouse and children:

(1) A "child" is under 18 years of age or under 21 years of age if a full-time student at an accredited institution of learning.

(2) If there are children in the household, subtract a living allowance for each ineligible child from the ineligible spouse's countable income. The living allowance is one-half of the monthly SSI FBR for an individual not living in a household with others less any income attributable to the child. If the remaining amount is less than one-half of the SSI FBR, no income is deemed from the ineligible spouse to the applicant/recipient. If the remaining amount equals or exceeds one-half of the SSI FBR, income is deemed from the ineligible spouse to the applicant/recipient.

(3) **Determination of countable income:** Add the total gross unearned income of the ineligible spouse to the total gross unearned income of the applicant/recipient. The \$20 disregard is deducted from the combined total of the couple's unearned income. If the total unearned income is less than \$20, the remainder is deducted from the combined total of the couple's earned income. The first \$65 and 1/2 of the remainder is subtracted from the combined total of the couple's earned income. After all applicable disregards have been subtracted, the remaining earned and unearned income amounts are combined to arrive at the total countable income. If the total countable income is less than the income standard for a couple, the applicant/recipient is eligible.

F. Applicant child living with ineligible parents: A "child" applicant/recipient is under 18 years of age. The ISD worker determines the total gross monthly amount of parental income, both unearned and earned. The ISD worker applies appropriate income disregards to calculate the countable deemed income. See 8.200.520.18 NMAC, *deemed income worksheet*. If the deemed income plus the child's separate income exceeds the income standard for an applicant/recipient, the child is not eligible for that month.

G. Applicant/recipient parent and applicant/recipient child(ren): If a household is composed of an applicant/recipient parent and an applicant/recipient child(ren), the income is deemed from the ineligible spouse to the applicant/recipient spouse if appropriate. See Subsection B of 8.215.500.21 NMAC, *deemed income*.

(1) If there is enough total income to make the applicant/recipient parent ineligible, the remainder of the income is carried over to be deemed to the child(ren). Deemed income is divided equally among the applicant/recipient children.

(2) If the total countable income of the child, including the deemed income, is more than the applicable income standard, the child is ineligible.

[2/1/1995, 7/31/1997; 8.215.500.21 NMAC - Rn, 8 NMAC 4.SSI.523, 3/1/2001; A, 6/1/2004; A, 4/1/2009; A, xx-xx-xx]

8.215.500.22 DISREGARDS: Income disregards are allowed as described below when applicable.

A. Child support payments: One-third of the amount of child support payments made to a child applicant/recipient is disregarded. The remainder is considered unearned income, subject to the appropriate disregards.

B. Twenty dollar disregard: The first twenty dollars (\$20) of unearned or earned income received in a month is disregarded. This disregard is applied first to unearned income, then to earned income if the unearned income is less than twenty dollars (\$20). If there is no unearned income, the entire twenty dollars (\$20) is applied to the gross earned income. This disregard is not applicable to payments made to an applicant/recipient through a state or other government assistance program, or by a private charitable organization, where such payments are based on the applicant/recipient's need.

C. Additional earned income disregard: After disregarding the first twenty dollars (\$20) as specified in 8.215.500.22.B NMAC above, if appropriate, earned income of sixty-five (\$65) per month plus one-half of the remainder is disregarded.

D. Work-related expenses of the blind or disabled: Work-related expenses of an employed applicant/recipient or couple who is/are legally blind or disabled are disregarded. This disregard is for earned income only. The dollar amount of expenses which may be disregarded must be items or services directly related to enabling a person to work and which are necessarily incurred by that individual because of a physical or mental disability or blindness. Such costs incurred must be reasonable. Expenses are disregarded when paid and must be verified.

(1) This disregard does not apply to an applicant/recipient who is blind and is sixty-five (65) years of age or older, unless he/she was receiving SSI payments due to blindness or disability in the month before turning sixty-five (65) or received payments under a state aid to the blind or disabled program.

(2) Types of work-related expenses which may be disregarded include:

(a) federal, state, and local income taxes;

(b) social security contributions;

(c) union dues;

(d) transportation costs, including actual cost of bus/taxi cab fare, or fifteen (15) cents per mile for private automobile;

(e) lunches;

(f) child care costs, if not otherwise provided;

(g) uniforms, tools, and other necessary equipment;

(h) special vehicle modifications to enable transportation to and from work, but not the cost of the vehicle itself;

(i) attendants who may be hired for the purpose of taking applicant/recipient to and from work, and getting ready for work;

(j) durable medical equipment that is medically related and generally not useful in absence of the blindness or disability yet are necessary to attend and perform tasks in the work place;

(k) expenses for work related equipment which is impairment related and necessary for the individual to perform his/her tasks;

(l) prostheses necessary to perform work related tasks;

(m) design modifications related to blindness or disability that enable the applicant/recipient to leave home in order to attend work, or design modifications made to the work area of the home in the case where the applicant/recipient engages in a home based business; and

(n) special expenses necessary to enable an applicant/recipient who is blind or disabled to engage in employment, such as a seeing-eye dog, braille instructions, or instructions on using special equipment.

(3) If items or services above are purchased through an installment contract, the payments are disregarded. Should the item or service be a one time purchase, the purchase may be pro-rated over a 12 month period, or over the life of the contract.

(4) For items which are leased, the monthly payment would be disregarded.

E. Student earned income:

(1) This disregard applies only to a student's own earned income and includes all payments made as compensation for services, such as wages from employment or self-employment, or payments from programs such as neighborhood youth corps or work-study.

(2) This disregard is available in addition to any exclusions applied to grants, scholarships or fellowships and in addition to any other allowable disregards.

(3) Up to \$1,200 per quarter, or a maximum of \$1,620 per calendar year, of the earned income of certain students may be disregarded. To qualify for this disregard, the applicant/recipient must meet all of the following requirements:

(a) under twenty-two (22) years of age;

(b) unmarried;

(c) not the head of a household; and

(d) in regular attendance at a college or university for at least twelve (12) semester

hours or a school or vocational or technical training course for at least twenty (20) hours per week.

[2/1/1995, 7/31/1997, 2-1-00; 8.215.500.22 NMAC - Rn, 8 NMAC 4.SSI.525, 3/1/2001]

8.215.500.23 INCOME STANDARD: When computing an applicant/recipient's eligibility, the applicable income standard is that of the SSI-related category being applied for/received. See 8.200.520 NMAC and following subsections.

[2/1/1995, 7/31/1997; 8.215.500.23 NMAC - Rn, 8 NMAC 4.SSI.526, 3/1/2001]

HISTORY OF 8.215.500 NMAC: The material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:

MAD Rule 860, SSI Methodology For Computation Of Countable Resources And Income, 3/17/1990.

MAD Rule 860, SSI Methodology For Computation Of Countable Resources And Income, 3/21/1990.

MAD Rule 860, SSI Methodology For Computation Of Countable Resources And Income, 4/24/1991.

MAD Rule 860, SSI Methodology For Computation Of Countable Resources And Income, 6/19/1992.

MAD Rule 861, Resources - SSI Methodology For Computation Of Countable Resources And Income, 3/18/1993.

MAD Rule 861, Resources - SSI Methodology For Computation Of Countable Resources And Income, 12/29/1994.

MAD Rule 862, Income - SSI Methodology For Computation Of Countable Resources And Income, 3/18/1993.

MAD Rule 864, Potential Income Or Resources - SSI Methodology For Computation Of Countable Resources And

Income, 3/18/1993.

MAD Rule 866, Deeming Income, 11/16/1994.